Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

International Association of Machinists and Aerospace Workers,

applicant,

and

Servisair Inc.,

respondent,

and

National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW–Canada);

Canada Council of Teamsters,

bargaining agents.

Board File: 29687-C

International Association of Machinists and Aerospace Workers,

applicant,

and

Servisair Inc.,

respondent,

and

National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW–Canada);

Canada Council of Teamsters.

bargaining agents.

Board File: 29688-C

International Association of Machinists and Aerospace Workers,

applicant,

and

Servisair Inc.;

Servisair Deicing Services Inc.,

respondents,

and

National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW–Canada);

Canada Council of Teamsters,

intervenors,

and

Teamsters/Québec, Local 931,

interested party.

Board File: 29959-C
Neutral Citation: 2013 CIRB **692**
July 26, 2013

The Canada Industrial Relations Board (the Board) was composed of Ms. Elizabeth MacPherson, Chairperson, sitting alone pursuant to section 14(3) of the *Canada Labour Code (Part I – Industrial Relations)* (the *Code*).

Counsel of Record

Ms. Amanda Pask, counsel for the International Association of Machinists and Aerospace Workers;

Mr. Richard Coutu, counsel for Servisair Inc;

Mr. Anthony F. Dale, counsel for National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW–Canada);

Mr. Stéphane Lacoste, counsel for Canada Council of Teamsters;

Mr. Pierre-André Blanchard, counsel for Teamsters/Québec, Local 931.

I. Nature of the Application/Complaint

[1] In January 2013, the Board declared that the sale of Handlex Groundhandling Services Inc. (Handlex) to Servisair Inc. (Servisair), on or about June 13, 2012, constituted a sale of business within the meaning of section 44 of the *Code*. Following the sale, the employees of the two companies were intermingled.

[2] In Vancouver, British Columbia, the bargaining agents affected by the sale, the International Association of Machinists and Aerospace Workers (IAMAW) and the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW–Canada), reached agreement on the creation of two distinct bargaining units based on the nature of the work performed and the scope of each of these bargaining units.

[3] In Toronto, Ontario and Montréal, Quebec, a number of different bargaining agents represented employees affected by the sale. In addition to the IAMAW and CAW–Canada, the Canada Council of Teamsters (the CCT) and the Cartage and Miscellaneous Employees' Union, Local 931 (Teamsters Quebec Local 931) held representation rights for certain of these employees. The Board determined that it would be appropriate to review the bargaining unit structures in existence in Toronto (Board file no. 29687-C) and Montréal (Board file no. 29688-C) pursuant to sections 45 and 18.1 of the *Code*.

[4] As required by section 18.1(2) of the *Code*, the Board provided the parties affected by the sale of business with a period of time in which to endeavour to reach agreement with respect to the scope of the appropriate bargaining unit(s) in each location. The parties were unable to reach

agreement and were requested to provide the Board with written submissions regarding this issue. After reviewing the respective written submissions, the Board requested additional information from the IAMAW and Servisair. The Board and all of the parties were provided with the requested information and only the CAW–Canada submitted comments. The parties were advised that pleadings had closed with respect to these two files on June 24, 2013.

[5] In the meantime, Servisair created a new division, Servisair Deicing Services Inc. (SDS). SDS currently has deicing operations at Pearson airport in Toronto and at the Winnipeg airport. The Board has been advised that it intends to seek contracts at other airports. On April 22, 2013, the IAMAW filed an application pursuant to section 35 of the *Code*, seeking a declaration that Servisair and SDS are a single employer for labour relations purposes (Board file no. 29959-C). The CAW–Canada and the CCT sought and were granted intervenor status in this matter. Pleadings closed with the receipt of the applicant's reply submissions on June 10, 2013, and the parties were informed that the matter was being submitted to the Board for consideration on June 24, 2013.

[6] Having reviewed all of the parties' detailed and comprehensive written submissions with respect to the three files, the Board is satisfied that an oral hearing is not required and has therefore exercised its discretion pursuant to section 16.1 of the *Code* to dispense with an oral hearing.

II. Background and Facts

[7] Servisair is one of a number of aviation ground handling service companies worldwide that form part of Derichebourg S.A., a company incorporated in France. It provides a variety of services at a number of Canadian airports, such as ground handling, cargo, airport passenger services, airport infrastructure services, fuel management and maintenance of runway equipment. As noted above, SDS was recently created as a wholly-owned subsidiary to specialize in providing deicing services. Deicers in Toronto now work for SDS, rather than Servisair but remain members of the IAMAW.

[8] Prior to June 2012, Handlex was a subsidiary of Transat A.T. Inc. that provided airport ground services, including passenger reception and check-in, baggage and cargo handling,

aircraft cleaning and ramp services at the Montréal, Toronto and Vancouver international airports. Servisair and Transat A.T. Inc. reached agreement for the sale of Handlex to Servisair in May 2012 and the transaction was completed on June 13, 2012. The work forces of the two companies were merged as of December 1, 2012.

[9] As noted above, the parties reached agreement on a new bargaining unit structure for the Vancouver location and in January 2013, the Board certified the CAW–Canada to represent a unit of passenger service agents at the Vancouver International Airport (referred to as the "above-the-wing" unit; Board order no. 10349-U) and the IAMAW for a unit composed of groomers, ground handlers and mechanics (the "below-the-wing" unit; Board order no. 10352-U).

[10] The situation at the Montréal and Toronto airports is somewhat more complex, as there are more bargaining units and bargaining agents affected by the sale of business at those locations. In total, some 1747 employees, each subject to one of seven certification orders, are affected by the sale. The following summary depicts the bargaining unit structures that existed at these airports immediately prior to the June 2012 sale.

A. TORONTO

1. Servisair:

[11] Order no. 6271-U, issued July 20, 1993 to the IAMAW for a unit composed of:

> "all employees of Hudson General Aviation Services Inc. working at the Toronto International Airport, **excluding** supervisors and general manager."

(Note: Hudson General Aviation Services was subsequently acquired by Servisair).

- approximately 533 employees in the unit, including Airport Customer Assistant Program (ACAP) agents.
- collective agreement expired June 30, 2012.

2. Handlex:

[12] Order no. 7162-U, issued April 3, 1997 to the CAW–Canada for a unit composed of:

> "all cabin service attendants of Haycot Services Inc., in the Province of Ontario, **excluding** supervisors and those above the rank of supervisor."

(Note: Haycot Services Inc. was acquired by Air Transat A.T. Inc. and this unit ultimately became part of Handlex).

- approximately 65 cabin service attendants (groomers) in the unit.
- collective agreement expires February 28, 2014.

[13] Order no. 7672-U, issued October 8, 1999 to the CAW–Canada for a unit composed of:

> "all passenger service agents of Air Transat A.T. Inc. in the Province of Ontario, **excluding** supervisors, those above the rank of supervisor, and those already covered by a previous certification order."

(Note: this unit was part of Handlex).

- approximately 154 employees in the unit.
- collective agreement expires February 28, 2014.

[14] Order no. 8803-U, issued to the CCT on March 24, 2005 for a unit composed of:

> "all ramp employees of Handlex Groundhandling Services Inc. working at the Montréal International Airport (Mirabel and Dorval) and at the Pearson International Airport in Toronto as station attendant/baggageman, lead baggageman and mechanic."

- approximately 170 employees in Toronto.
- collective agreement expires November 30, 2013.

B. MONTRÉAL

1. Servisair:

[15] Order no. 9806-U, issued to the IAMAW on January 29, 2010 for a unit composed of:

> "all employees of Servisair Inc. working at the Montréal International Airports (Dorval and Mirabel), **excluding** administrative staff, supervisors, and those above."

- approximately 228 employees in the unit, including cabin service (groomers), lounge agents, mechanics, customer service agents and ramp agents.
- collective agreement expires April 30, 2013.

2. Handlex:

[16] Order no. 7172-U, issued to the CAW–Canada on April 16, 1997 for a unit composed of:

> "all employees of Haycot Services Inc. working out of Mirabel and Dorval Airports and employed as passenger agents, **excluding** office employees, foremen, those covered by a collective agreement and those normally excluded by the Labour Code."

(Note: Haycot Services Inc. was acquired by Air Transat A.T. Inc. and this unit ultimately became part of Handlex).

- approximately 165 employees in the unit.
- collective agreement expires February 28, 2014.

[17] Order no. 8803-U, issued to the CCT on March 24, 2005 for a unit composed of:

> "all ramp employees of Handlex Groundhandling Services Inc. working at the Montréal International Airport (Mirabel and Dorval) and at the Pearson International Airport in Toronto as station attendant/baggageman, lead baggageman and mechanic."

- approximately 144 employees in Montréal.
- collective agreement expires November 30, 2013.

[18] Order no. 9750-U, issued to Teamsters Quebec Local 931 on December 23, 2009, restoring the union's bargaining rights for a unit composed of:

> "all in-flight service attendants of Handlex Groundhandling Services Inc. working at the Dorval and Mirabel airports, **excluding** supervisors, assistant supervisors and those above."

- approximately 74 groomers in the unit.
- collective agreement expires March 26, 2014.

III. Positions of the Parties

A. The IAMAW

[19] As noted above, the IAMAW is the certified bargaining agent for the bargaining units at Servisair that existed at the time Handlex was acquired and its employees were integrated with those of Servisair. The IAMAW submits that this pre-existing Servisair bargaining unit structure

should be maintained. This would result in a single "all employee" unit in Toronto and a single "all employee" unit in Montréal.

[20] The IAMAW reminds the Board of its longstanding policy preference for larger, all employee units. It submits that the structure at Servisair has proven itself to be viable over decades, and that it has allowed for effective collective bargaining and harmonious labour relations. It indicates that, since it was first certified for a combined ramp and passenger service unit in Montréal in 1998, the IAMAW has successfully negotiated five successive collective agreements without any labour disruption. In Toronto, there have also been no strikes or lockouts since the IAMAW was certified for a combined unit in 1993.

[21] The IAMAW argues that there is a shared community of interest between all classifications employed by Servisair. Without identifying any specifics of this alleged community of interest, the IAMAW suggests that the longstanding durability of the two "all employee" units it represents at Servisair, and their success in negotiating successive collective agreements without any strikes or lockouts, demonstrates that such a community of interest exists.

[22] It argues that fragmenting the units would strip affected employees of existing rights. The IAMAW notes that both of its collective agreements with Servisair provide bargaining unit members with the right to use their seniority to access vacant and promotional positions in any other classification or group. The ability to hold seniority rights in multiple classifications provides significant protection in the event of layoffs. It also points out that the broader unit encompasses positions with a range of physical demands, providing better opportunities should the need arise to accommodate a disability.

[23] The IAMAW suggests that "all employee" units are administratively efficient and maintain a realistic balance of bargaining power between the union and the employer. They prevent a multiplicity of collective bargaining negotiations and the resulting increased potential for disruption due to strikes and lockouts. The IAMAW notes that, although the employer has submitted that the company's operational structure should be taken into account, Servisair has not provided any evidence with respect to its organizational structure that would justify the bargaining unit structure the employer has proposed. It points out that a broader based bargaining

unit would not restrict the company's options with respect to its own internal administrative organization.

[24] The IAMAW argues that none of the factors that the Board generally considers to favour the fragmentation of a bargaining unit are present in this case. It suggests that the fragmented bargaining unit structure that existed at Handlex is the result of the application, over a period of time, of the Board's policy of favouring access to collective bargaining, rather than any considered decision that the employees in the various units lacked a community of interest. The IAMAW argues that there is no "industry standard" or prevailing practice with respect to bargaining units in the aviation services industry. It indicates that examples exist of situations in which ramp and passenger agents are in the same bargaining unit and those in which they are in separate units. It submits that, in this case, the Board's policy against the fragmentation of unit structures should apply and that the Board should not impose a new structure that deprives unionized employees of existing rights without a clear demonstration that the existing structure has become unworkable.

[25] It also submits that the factors that led the Board to accept a divided unit structure in Vancouver are not present in Montréal and Toronto. In Vancouver, the Board sanctioned an agreement between the parties reached in accordance with section 18.1(2) and (3) of the *Code*. In Vancouver, there was no pre-existing "all employee" unit at either Servisair or Handlex, so the creation of two distinct bargaining units did not deprive employees of any established collective agreement rights. Lastly, the distribution of bargaining rights in Vancouver respected the employees' prior choice of bargaining agent. The IAMAW suggests that none of these factors are present in Toronto and Montréal and that it is therefore appropriate for the Board to apply its longstanding policy of preferring larger bargaining units when access to collective bargaining is not an issue.

[26] The IAMAW further submits that the Board should find that Servisair and SDS are a single employer for labour relations purposes and that the deicers in Toronto should be part of an "all employee" unit in that city. The IAMAW submits that SDS is fully-owned and controlled by the Servisair group and that labour relations for SDS employees are handled by Servisair's Human Resources Department. It notes that Servisair has not denied that the five basic criteria for a

single employer declaration established in *Murray Hill Limousine Service Ltd. et al.* (1988), 74 di 127 (CLRB no. 699) (*Murray Hill 699*) are present in this case and observes that the organization charts provided by Servisair confirm that both employers are under common direction or control. It argues that Servisair's internal restructuring is not a sufficient reason to divide the bargaining unit.

[27] The IAMAW argues that there is an important labour relations purpose for a single employer declaration in this case. Until the creation of SDS, deicers in Toronto represented by the IAMAW were able to benefit from provisions in the collective agreement that recognize the seasonal nature of deicing work, permit them to train and qualify for work in the ground services (ramp) group and to acquire seniority rights in that group. The IAMAW submits that a single employer declaration is necessary to preserve the deicers' existing, collectively bargained rights, particularly the right to continue to access off-season work at Servisair. It suggests that, if ramp and deicing employees were to be fragmented into different bargaining units, potentially represented by different bargaining agents, the cross-deployment of employees between ramp and deicing duties could become unsustainable, thus negatively affecting these employees' existing mobility rights. It also suggests that at least one current deicer holds seniority in the communications co-ordinator position.

[28] The IAMAW submits that the bargaining unit structure it has proposed meets the objectives of providing the employer with the flexibility to manage its operations in an effective and efficient manner while at the same time providing employees with the best means to protect their rights under the *Code* and to further their careers. In the IAMAW's submission, the bargaining units it proposes do not restrict any administrative structure the employer may choose to implement; provides employees with the bargaining power necessary to countervail that of the employer; and enhances employees' access to lateral and promotional opportunities. It submits that the fragmented structure advocated by Servisair and the other bargaining agents would negatively affect rights negotiated and enjoyed by Servisair employees in the past.

[29] The IAMAW argues that Servisair bears the onus of justifying why the union's representation rights and the collectively bargained *status quo* should be altered (citing *Telus Communications Inc.*, 2004 CIRB 278) and submits that Servisair has not met this onus.

B. The CAW–Canada

[30] The CAW–Canada proposes that there should be five distinct bargaining units:

- a Toronto "above-the-wing" unit (passenger service and ACAP agents in Toronto);
- a Toronto "below-the-wing" unit (ramp employees, mechanics and deicers in Toronto);
- a Toronto groomers unit;
- a Montréal "above-the-wing" unit (passenger service agents and lounge employees in Montréal); and
- a Montréal "below-the-wing" unit (groomers, ramp employees and mechanics in Montréal).

[31] The CAW–Canada suggests that the Board should have regard to the former bargaining unit structures at both Servisair and Handlex. With respect to the traditional factors that the Board relies on when determining the scope of an appropriate bargaining unit, the CAW–Canada suggests that both the unified (Servisair) and fragmented (Handlex) structures have proven to be viable and neither is to be preferred over the other.

[32] The CAW–Canada submits that its proposed bargaining unit structure is similar to the one accepted by the Board in Vancouver, with the exception of the carve-out of groomers from the proposed "below-the-wing" unit in Toronto. It submits that a separate unit of groomers in Toronto would be consistent with the previous practice at Handlex and would balance the interests of the employees and the employer.

[33] The CAW–Canada agrees with and supports the IAMAW's application for a declaration that Servisair and SDS are a single employer for labour relations purposes. It suggests that it would be difficult, if not impossible, to protect and preserve the deicers' seniority rights if they are found to be employed by a different employer than the ramp employees.

C. The CCT

[34] The CCT recommends that the Board replicate the bargaining unit structure that exists at Servisair in Vancouver, and create four bargaining units:

- a Toronto "above-the-wing" unit (passenger service agents, ACAP and lounge agents);
- a Toronto "below-the-wing" unit (ramp employees, ground handlers, in-flight or cabin service attendants (groomers), station attendants/baggage handlers, mechanics and welders plus the deicers);
- a Montréal "above-the-wing" unit (passenger service agents, ACAP and lounge agents);
- a Montréal "below-the-wing" unit (ramp employees, ground handlers, in-flight or cabin service attendants (groomers), station attendants/baggage handlers, mechanics and welders).

[35] The CCT argues that, in the transportation industry, it is usual to have regional or location-based bargaining units. The CCT notes that its existing certification for Handlex ramp attendants, baggage handlers and mechanics spans both Montréal and Toronto. The CCT states that it has found negotiating a common collective agreement for these two locations far from ideal, as workers in Montréal and Toronto have different interests. The CCT therefore advocates that the Board establish separate bargaining units for the two locations.

[36] With respect to the distinction between "above-the-wing" and "below-the-wing" functions, the CCT suggests this is analogous to the traditional distinction between white collar and blue collar bargaining units. It argues that employees working "above-the-wing" deal with the public, while those "below-the-wing" work with equipment, and that there is no interchangeability between the two groups. The CCT points out that this distinction has historically been recognized by the Board, and is the structure recently agreed upon by the IAMAW and CAW–Canada for the Servisair operations at the Vancouver airport.

[37] The CCT argues that the deicers employed by SDS should be included in the "below-the-wing" unit in Toronto, on the grounds that Servisair controls and directs these employees through the subsidiary it has created. It agrees with the IAMAW's request that Servisair and SDS be declared a single employer and submits that section 35 of the *Code* is intended to prevent an

employer from fragmenting bargaining units through corporate restructuring such as that which has occurred in this case.

D. Teamsters Quebec Local 931

[38] Teamsters Quebec Local 931 agrees with the submissions of the CCT.

[39] It should be noted that, by letter dated April 30, 2013, Teamsters Quebec Local 931 indicated that, in the event that a representation vote is ordered in Montréal involving the unit that it currently represents, it would cede its rights to the Canada Council of Teamsters. Consequently, it requests that the CCT and not Teamsters Quebec Local 931 be named as an option on any ballot involving the groomers in Montréal.

E. Servisair

[40] Servisair agrees with the concept of separate "above-the-wing" and "below-the-wing" bargaining units in each location, but submits that the Board should find SDS to be a separate employer from Servisair and should place the deicers in a separate unit of their own.

[41] In Servisair's submission, the "above-the-wing" unit in Toronto would consist of passenger service agents and ACAP agents; the "below-the-wing" unit would consist of ramp attendants, groomers and mechanics. The "above-the-wing" unit in Montréal would consist of passenger service agents and lounge attendants, while the "below-the-wing" unit would also consist of ramp attendants, groomers and mechanics.

[42] Servisair suggests that, although the Board has exclusive jurisdiction to determine the scope of appropriate bargaining units, it is not required to determine the ideal unit, or even the most appropriate unit. It submits that the fundamental principle guiding the Board with respect to bargaining unit determination is that the bargaining unit structure should ensure industrial peace and sound labour-management relations (citing *Brink's Canada Limited*, 2005 CIRB 332). Servisair argues that, of all of the well-established principles and criteria that the Board considers when determining the appropriateness of a bargaining unit, the community of interest of the employee groups is paramount (citing *Airlift Limited* (1990), 81 di 1; 13 CLRBR (2d) 276; and 90 CLLC 16,035 (CLRB no. 797)).

[43] Servisair submits that a bargaining unit structure that distinguishes between "above-the-wing" and "below-the-wing" functions is consistent with that agreed upon by the parties in Vancouver, who have recognized the soundness of separate units for the two distinct types of functions. The "above-the-wing" employees are in contact with customers and their function is to ensure impeccable service. Their jobs require greater customer communication skills. In contrast, the "below-the-wing" functions are somewhat invisible to customers, because these jobs consist of carrying out and co-ordinating ground operations and thus require more specialized skills or assignment-based competencies. Servisair argues that these two groups of employees have no community of interest, as their daily realities are totally different. It states that there is no interchangeability of employees between the two groups because of the differing competencies, skills and training required. As well, it submits, there is no interaction between the two groups of employees and they perform their jobs independent of one another.

[44] Servisair argues that, although the IAMAW currently represents "all employee" bargaining units in Montréal and Toronto, the increase in staff that has resulted from its acquisition of Handlex has created a situation that permits the development of bargaining units based on occupational functions having a community of interest. It argues that each functionally based unit would be large enough to be viable on its own. Servisair suggests that the prevailing practice in the industry is to group employees occupying similar functions in each airport, rather than to create global units.

[45] Servisair suggests that the units that it proposes reflect the company's operational structure. It notes that a number of its clients sometimes contract for only one function and not the other. It submits that the IAMAW's contention that "all employee" units have proven viable in the past does not take into consideration Servisair's new reality, which involves a much larger employee complement. Since the acquisition of Handlex, there are now 611 employees in Montréal and 922 in Toronto. Servisair suggests that given the size of the work force now in place, the bargaining unit structure it proposes would result in viable bargaining units. Servisair argues that it is therefore appropriate for the Board to place more emphasis on community of interest rather than bargaining unit viability as a determining factor.

[46] Servisair argues that the potential for lateral mobility and retention of seniority rights would not be affected by its proposed structure, as the majority of such moves take place within the "below-the-wing" unit.

[47] Servisair argues that the deicers should be in a separate bargaining unit that recognizes SDS as the employer. It argues that there is no labour relations purpose to justify declaring that Servisair is a single employer with SDS. It points out that, by operation of section 44 of the *Code*, SDS and the deicers remain subject to the collective agreement between Servisair and the IAMAW that was in effect at the time the subsidiary was created, and thus the union's bargaining rights with respect to these employees have been preserved. Servisair suggests that there is no evidence that a single employer declaration would produce more harmonious labour relations and submits that the single employer application should be dismissed.

IV. Analysis and Decision

[48] The IAMAW accurately summarized the issue facing the Board when it stated that the Board has before it a number of competing proposals as to the appropriate bargaining units, with no two parties putting forward the same model. In the circumstances of this case, there is no presumption favouring any of the proposed models. The Board must make its decision based on a principled application of the policies and practices established and explained in its jurisprudence.

[49] It is well established that the Board has exclusive jurisdiction to determine the appropriate bargaining unit in any given case (*Royal Aviation*, 2000 CIRB 69). In undertaking this responsibility, the Board is not required to determine the ideal unit, or even the most appropriate unit, but only an appropriate unit (*National Bank of Canada* (1985), 58 di 94; 11 CLRBR (NS) 257; and 86 CLLC 16,032 (partial report) (CLRB no. 542)). Consequently, the determination of the appropriate bargaining unit is more of an art than a science. As the Board stated in *CFTO-TV Limited* (1981), 45 di 306 (CLRB no. 345), the decision must be based on the facts and circumstances of each particular case:

> There is nothing that the Board can say in this case regarding appropriate bargaining unit determination that has not already been said in countless decisions emanating from labour relations boards throughout the years. The variety of "criteria" and "considerations" only goes to prove that bargaining unit configurations cannot be "carved in stone". Standard industry type units can be created

> that will suit most applications but there will always be the exceptions where circumstances will dictate variations and even inconsistencies. In such cases, bargaining units must reflect the special circumstances and be determined according to the merits of each case. ...
>
> (pages 310-311)

[50] Factors considered by the Board in making its determination regarding the appropriateness of a bargaining unit include community of interest; viability of the unit; employee wishes; industry practice or pattern and the organizational structure of the employer. Although the Board has expressed a general preference for wider-based bargaining units, which it believes promote administrative efficiency, convenience in bargaining and industrial stability, the Board will often deviate from that expressed preference. For example, when seized with an application for certification of a newly organized bargaining unit, the Board will favour factors that increase access to collective bargaining and may certify units that consist of a subset of the occupations present in the workplace, even if such groupings are not optimal from the view point of the employer's organizational structure. As the Board stated in *G4S Secure Solutions (Canada) Ltd.*, 2012 CIRB 625:

> [48] ... While the Board has expressed a preference for wider-based units, there is no automatic presumption in favour of large units. The Board will certify a smaller unit, if necessary to give effect to the employees' constitutionally guaranteed right to freedom of association. To achieve this objective, the Board may certify a local rather than regional or national bargaining unit, even if this causes some administrative inconvenience to the employer. The Board's decision on the appropriateness of a bargaining unit will generally be upheld unless a court considers it clearly irrational (see *International Longshoremen's and Warehousemen's Union, Ship and Dock Foremen, Local 514* v. *Prince Rupert Grain Ltd.*, [1996] 2 S.C.R. 432).

[51] In cases where collective bargaining is well established and the parties have longstanding relationships, the Board may place greater emphasis on factors other than access to collective bargaining. In *Sécur Inc.*, 2001 CIRB 109, the Board indicated:

> [60] The question of reconfiguring the units is not exempt from the fundamental objectives of the *Code* of which the Board is required to establish the practical side. Accordingly, the reconfiguration of bargaining units must promote the employees' exercise of the rights conferred by the *Code* while enabling the business to be operated properly. **The Board must therefore deal with a reconfiguration with a sufficiently long-term vision to contribute to the development of relations between the bargaining agents and the employer with regard to the proposed units.** While considering these general principles, the Board will nonetheless take into account the specific facts of each application.
>
> (emphasis added)

[52] Similarly, in *Canadian National Railway Company*, 2011 CIRB 563, in the context of a bargaining unit review following a sale of business, the Board stated:

> [59] When the Board determines the contours of bargaining units, **its primary purpose is to create units conducive to constructive collective bargaining and harmonious labour management relations.** Between the two extremes advocated by the parties, there are a number of other bargaining unit configurations that may be more appropriate than the existing structure. (...)
>
> (emphasis added)

[53] In a subsequent decision, *Canadian National Railway Company*, 2011 CIRB 594, the Board set out the criteria it will use when dealing with a bargaining unit reconfiguration following a sale of business:

> [19] In considering the respective submissions of the parties and endeavouring to fashion bargaining units that will encourage constructive collective bargaining, the Board has developed the following criteria to guide its deliberations in sale of business cases:
>
> 1) in general, when the bargaining unit(s) at the company being purchased (in this case, the short line) and the employer that is purchasing it (in this case, the mainline) are represented by the same bargaining agent, the bargaining units should be merged, unless the parties agree on a different configuration in accordance with section 18.1 of the *Code*;
>
> 2) when the employees of the employer being purchased (in this case, the short line) perform the same work as the employees of the purchaser, are unrepresented and represent a small minority in comparison with the number of employees in the purchaser's bargaining unit, they should become members of the purchaser's bargaining unit as of the date of the order;
>
> 3) if the unrepresented employees of the company being purchased outnumber the unionized employees working for the employer that is acquiring the business, then the union must organize the new employees (i.e., the double majority rule applies);
>
> 4) when employees performing the same or similar work in bargaining unit(s) at the employer being purchased and those of the purchaser are represented by a different bargaining agent, the Board will exercise its discretion under sections 45 and 18.1(4) of the *Code* according to the circumstances of each case to determine whether the units should be merged and, if so, which bargaining agent will represent the employees.

[54] In the instant case, the Board does not understand any of the parties to be arguing for the maintenance of the existing seven unit bargaining structure. There appears to be general agreement among the parties that the existing structure is no longer appropriate. There is also general agreement that it is appropriate to recognize geographic factors, with separate units for each of the two locations (Montréal and Toronto). Even the CCT, which currently represents a

unit that encompasses both locations, indicates that the successful negotiation of collective agreements is difficult as employees in the two cities do not share a community of interest.

[55] The Board agrees that it is appropriate to create separate units for Montréal and Toronto. The remaining issue is to determine which, if any, of the existing bargaining units should be merged in each location.

A. Community of interest

[56] The IAMAW insists that Servisair's unionized employees share a community of interest, regardless of the function they perform. It indicates that these employees have an interest in being able to exercise their seniority within a larger bargaining unit, and that this ability is important in the context of accommodation cases. It points to the success it has had in negotiating collective agreements on behalf of the two existing "all employee" units and suggests that this is evidence that a community of interest exists.

[57] Servisair, supported by the other bargaining agents, argues that the "above-the-wing" and "below-the-wing" groups do not share a community of interest and operate independently of one another. Servisair submits that, with rare exceptions, there is very little lateral mobility between the two groups.

[58] The Board agrees that, at a high level, the unionized employees of Servisair share a common interest in the success of the employer's business, which ensures them continued employment. However, the differences in skill sets and the low degree of interaction and/or interchangeability between employees in the two groups suggests that, at a practical every-day level, the two groups have different interests that would become evident during collective bargaining.

B. Viability of the Unit

[59] The Board's expressed preference for wider-based bargaining units is based on its belief that such units are more administratively efficient, as they result in fewer negotiations and therefore less opportunity for labour conflict. While this seems intuitive from an academic perspective, there is no evidence in this case to substantiate this view. The prospect of multiple

bargaining units, and therefore multiple sets of negotiations, does not appear to have dissuaded the employer from its position that five bargaining units are to be preferred to two.

[60] None of the models proposed raises any concerns regarding the viability of the units for collective bargaining. Accordingly, this factor is not determinative.

C. Organizational structure of the employer

[61] Although the employer suggested that its proposed model reflects its organizational structure, no evidence was provided to support this contention. In any event, the Board does not view the current organizational structure, which can be changed by the employer at any time, as a limiting factor in the determination of bargaining units.

D. Industry practice or pattern

[62] Both the IAMAW and Servisair provided examples of certification orders that support their respective contentions as to industry practice or pattern. The variety of bargaining units that the Board has found to be appropriate in this industry is more reflective of the events leading to the creation of those units and confirms the proposition that there is no one model that is appropriate in every circumstance.

[63] The most recent certification orders issued by the Board are those in Vancouver, which are the product of an agreement between the parties. To the extent that these orders reflect a recognition that separate bargaining units for "above-the-wing" and "below-the-wing" functions are appropriate for bargaining, they constitute a guide with respect to this particular employer.

E. Employee Wishes

[64] Although employee wishes are commonly listed as a factor in bargaining unit determination, this is of greater concern when the Board is dealing with issues of access to collective bargaining, as described above. In this case, employee wishes will be determined by means of representation votes, once the Board has established the bargaining unit structure.

[65] One benefit that the Board can see from a multi-bargaining unit structure is that it would provide more opportunity for employees to select the bargaining agent of their choice to

represent them. Given the Board's continuing concern that, to the greatest extent possible, its decisions facilitate employees' ability to exercise the freedom of association guaranteed to them by the *Canadian Charter of Rights and Freedoms*, this is an important consideration.

F. Conclusion

[66] The IAMAW argues that Servisair bears the onus of justifying why the *status quo* that it currently enjoys should be altered and submits that Servisair has not met this onus. However, there is another *status quo* in existence, namely the fragmented bargaining unit structure that exists for the former Handlex employees. Given that the matter before the Board is not one related to an alleged violation of the *Code*, the Board does not agree that any one party has an onus of proof in the circumstances of this case. Accordingly, there are no presumptions favouring one model over another.

[67] The Board sees no merit in the CAW–Canada's proposal that groomers in Toronto form a separate bargaining unit. Other than the fact that these employees are currently represented by the CAW–Canada, no case has been made to establish that they have a community of interest that differs in any significant way from other Servisair employees who service the aircraft.

[68] Balancing all of these considerations, the Board is of the opinion that, while all of the models proposed by the parties are appropriate for collective bargaining, the one to be preferred in this case is the model that recognizes a distinction between functions that are primarily engaged in "above-the-wing" or direct passenger service activities, and those primarily engaged in "below-the-wing" or equipment servicing activities. For greater certainty, the specific functions included in each generic group are as follows:

1. "Above-the-wing"

- Passenger service agents, including full-time and part-time customer service specialists and lead hands;
- Customer service agents;
- Lounge agents;
- Airport Customer Assistance Program (ACAP) agents.

2. "Below-the-wing"

- Ramp agents/ground handlers, including full-time and part-time ground service specialists and lead hands, aircraft servicemen, aircraft cleaners, charge hands and lead hands, full and part-time deicing and ground support specialists, quality control, zone deicing coordinators;
- Groomers;
- Mechanics, including equipment mechanics, apprentice mechanics, mechanic's helpers, and lead hands;
- Communications centre co-ordinators;
- Weight and balance specialists;
- Communication coordinators (CCO)

[69] The Board recognizes that there is a dispute between the parties as to the appropriate allocation of the communications centre co-ordinators, weight and balance specialists and the coordinating, planning & control agents. To some extent, these are "hybrid" positions that could comfortably fit within either bargaining unit. However, having reviewed the position descriptions provided to it, the Board has accepted the IAMAW's submissions that these operational positions have more in common with those performing the "below-the-wing" functions and has therefore assigned these positions to that group.

G. The Single Employer Application

[70] As noted above, Servisair recently created a subsidiary, SDS, to serve its deicing clients. It has assigned the deicers in Toronto to that subsidiary. Arguably, this disposition of Servisair's deicing business constitutes a sale of business within the meaning of section 44 of the *Code*, and therefore the IAMAW remains the bargaining agent for the deicers and SDS is bound by the collective agreement between Servisair and the IAMAW.

[71] The IAMAW has asked that the Board declare Servisair and SDS as a single employer for the purposes of the *Code*. The criteria for such a declaration were established by the Board in *Murray Hill 699* and are well known:

1. that there be two or more enterprises (businesses);
2. both under federal jurisdiction;
3. that are associated or related;
4. of which at least two, but not necessarily all, are employers; and
5. which are under common control or direction.

[72] Even when the Board finds that these five criteria have been met, it has discretion as to whether a declaration of single employer should be issued. In *S.V.N. Enterprises Ltd., doing business as S & K Trucking*, 2003 CIRB 219, the Board set out the principles that inform its decisions as to whether a labour relations purpose would be served by a single employer declaration:

> [54] The Board will only grant a declaration under section 35 if the declaration will serve a labour relations purpose. The Board's decision in *Air Canada et al.* (1989), 79 di 98; 7 CLRBR (2d) 252; and 90 CLLC 16,008 (CLRB no. 771) provides useful guidance when considering whether a labour relations purpose would be served by a single employer declaration:
>
> The purpose of section 35 has always guided the exercise of the Board's discretion in these matters. That purpose is aimed at preventing the undermining or evading of bargaining rights through corporate or business arrangements (see *British Columbia Telephone Company and Canadian Telephones and Supplies Ltd., supra*; and *Beam Transport (1980) Ltd. and Brentwood Transport Ltd.* (1988), 74 di 46 (CLRB no. 689)).
>
> Section 35 is not aimed at enhancing existing bargaining rights (*British Columbia Telephone Company and Canadian Telephones and Supplies Ltd., supra*). Its purpose is remedial in nature. It is designed to ensure that employers only distinct in appearance do not succeed in circumventing their obligations under the *Code* by resorting to corporate restructuring or other types of business arrangements:
>
> "... It was, after all, to prevent a management from escaping collective bargaining obligations owed under one corporate entity by transferring work to another controlled entity that Parliament put section 133 [now section 35] into the statute. ...
>
> (*Bradley Services Ltd. et al.* (1986), 65 di 111; 13 CLRBR (NS) 256; and 86 CLLC 16,036 (CLRB no. 570), pages 126; 272; and 14,432)"
>
> Section 35 is not aimed at exempting a bargaining agent from having to organize an otherwise genuinely distinct group of employees. In some cases, the issuance of a declaration by the Board may have that effect, but that is not its purpose. When the Board addresses the issue of discretion, **the question ceases to be whether common control exists; it becomes whether common control contributes to the erosion of bargaining rights.**
>
> (pages 118-119; 271; and 14,098; emphasis added)

[73] It is clear that the main purpose of section 35 is to deal with complex corporate arrangements that conceal the true relationship between a business and those who work for it. While the Board has used this provision to rationalize a bargaining unit structure in order to prevent disruption caused by inter-unit conflict (see, for example, *Air Canada*, 2000 CIRB 78), preventing the erosion of bargaining rights remains the primary purpose of this provision.

[74] In the instant case, there is no dispute that the five basic criteria are met. Servisair and SDS are associated companies, both under federal jurisdiction and both are employers. As SDS is a wholly-owned subsidiary of Servisair, they are subject to common control or direction. Although Servisair submits that there is no labour relations purpose for a single employer declaration, the IAMAW makes a compelling case as to the consequences for employees of the spin-off of the deicing component of Servisair's operations. Since deicing is a seasonal activity, there would be no work at SDS for the bargaining unit members in the off-season. Their ability to exercise the seniority rights that they currently have under the collective agreement with Servisair would be illusory if Servisair is no longer their employer.

[75] In the circumstances of this case, the Board is persuaded that there is a labour relations purpose to be served by issuing a declaration of single employer under section 35 of the *Code*. As the only deicers affected by the current application are located in Toronto, the single employer declaration only has practical application to the "below-the-wing" unit in Toronto at the present time. Should SDS engage deicers in Montréal in the future, the bargaining agent for the "below-the-wing" unit in that location would be required to demonstrate that it represents a majority of the newly hired deicers should it wish to add them to its bargaining unit.

[76] For all of these reasons, the Board declares that Servisair and SDS are a single employer for the purposes of the *Code* and that the following bargaining units are appropriate for collective bargaining:

(1) "Toronto above-the-wing"

"all passenger service and Airport Customer Assistant Program agents employed by Servisair Inc. at the Pearson International Airport in Toronto, Ontario, **excluding** office staff, managers, supervisors and those above the rank of supervisor."

(2) "Toronto below-the-wing"

"all groomers, ramp/ground handlers, including those engaged in deicing functions, mechanics, communications centre co-ordinators and weight and balance specialists employed by Servisair Inc. or Servisair Deicing Services Inc. at the Pearson International Airport in Toronto, Ontario, **excluding** office staff, managers, supervisors and those above the rank of supervisor."

(3) "Montréal above-the-wing"

"all passenger service and lounge agents employed by Servisair Inc. at the international airports in Montréal (Dorval and Mirabel), **excluding** office staff, managers, supervisors and those above the rank of supervisor."

(4) "Montréal below-the-wing"

"all groomers, ramp/ground handlers, mechanics and communication co-ordinators employed by Servisair Inc. at the international airports in Montréal (Dorval and Mirabel), **excluding** office staff, managers, supervisors and those above the rank of supervisor."

[77] The Board hereby orders that representation votes be held to allow the employees in each bargaining unit to select the bargaining agent of their choice. Employees eligible to cast a ballot are those employees in the bargaining unit employed by the employer as at **October 31, 2012** and who remain so employed on the day of the vote.

[78] The candidates on each ballot will be:

(1) "Toronto above-the-wing"

- International Association of Machinists and Aerospace Workers
- National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)

(2) "Toronto below-the-wing"

- International Association of Machinists and Aerospace Workers

- National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)
- Canada Council of Teamsters

(3) "Montréal above-the-wing"

- International Association of Machinists and Aerospace Workers
- National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)

(4) "Montréal below-the-wing"

- International Association of Machinists and Aerospace Workers
- Canada Council of Teamsters

[79] Mr. Jean-Daniel Tardif, Acting Regional Director (Ontario) and Mr. Warren Nelson, Industrial Relations Officer, have been appointed as Returning Officers to supervise the votes. The Returning Officers will be in contact with the parties in the near future to organize the voting process.

[80] Signed on behalf of the Board,

Elizabeth MacPherson
Chairperson

c.c.: Mr. Jean-Daniel Tardif (CIRB–Toronto)
Mr. Warren Nelson (CIRB–Toronto)